



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000

www.wileyrein.com

July 1, 2015

Jan Witold Baran
202.719.7330
jbaran@wileyrein.com

Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6936 (94 HJY (WHJY) and Geoff Charles)

Dear Office of General Counsel:

This office represents iHeartMedia, Inc. – the owner and operator of 94 HJY (WHJY) – and Mr. Geoff Charles in the above-captioned Matter Under Review (“MUR”). This letter responds to the complaint of Christopher Sheldon (“Complaint”) received by the Federal Election Commission (“FEC” or “Commission”) on April 27, 2015.¹ The Complaint alleges that WHJY impermissibly broadcast campaign advocacy by Mr. Charles, a WHJY on-air personality, and did not include a disclaimer indicating who paid for the broadcast.

There is no reason to believe that WHJY and Mr. Charles violated the Federal Election Campaign Act of 1971, as amended (the “Act”), because the activity described in the Complaint unequivocally qualifies for the press exemption.

FACTS

Formerly known as Clear Channel Communications, Inc., iHeartMedia, Inc. is a publicly traded global media and entertainment company. *See Clear Channel Becomes iHeartMedia*, iHeartMedia, <http://iheartmedia.com/pages/press.aspx> (Sept. 16, 2014). WHJY is a Providence, RI radio station owned and operated by iHeartMedia, Inc. *See Station Search*, iHeartMedia, <http://www.iheartmedia.com/CCME/Pages/StationSearch.aspx> (last visited June 18, 2015). WHJY broadcasts twenty-four hours a day and features numerous on-air personalities during its broadcasts. *See On-Air, 94 HJY*, <http://www.94hjy.com/onair/> (last visited June 18, 2015). Mr. Charles is employed by WHJY and is the on-air personality who hosts WHJY’s 7pm-9pm radio broadcast. *Id.*

In addition to radio broadcasts, WHJY disseminates content by its on-air personalities on the WHJY website. *See, e.g., Alz Food Blog*, 94 HJY,

¹ By letter dated May 21, 2015, the Commission granted our request for an extension of time to respond to the Complaint until July 4, 2015.



Office of General Counsel

July 1, 2015

Page 3

11 C.F.R. §§ 100.73, 100.132.

This provision—known as the “media” or “press” exemption—is jurisdictional. In other words, if the exemption applies, “the FEC lacks subject matter jurisdiction and is barred from investigating the subject matter of the complaint.” *FEC v. Phillips Publ’g, Inc.*, 517 F. Supp. 1308, 1313 (D.D.C. 1981). Thus, where the press exemption applies, “[n]o inquiry may be addressed to sources of information, research, motivation, connection with the campaign, etc.” *Reader’s Digest Ass’n v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

The Commission has developed the following analytical framework to further assess application of the press exemption:

To determine whether the press exemption applies, the Commission first asks whether the entity engaging in the activity is a press or media entity. Second, the Commission has applied the two-part analysis presented in *Reader’s Digest Association v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981), which requires it to establish:

(A) That the entity is not owned or controlled by a political party, political committee, or candidate; and

(B) That the entity is acting as a press entity in conducting the activity at issue (*i.e.*, whether the press entity is acting in its “legitimate press function”) (internal citations omitted).

FEC Advisory Opinion 2008-14 (Melothe, Inc.) As to this final inquiry, the Commission’s analysis is guided by two considerations: (1) whether the entity’s materials are available to the general public, and (2) whether the challenged materials are comparable in form to those ordinarily issued by the entity. FEC Advisory Opinion 2005-16, at 4 (Fired Up!); *see also Reader’s Digest Ass’n*, 509 F. Supp. at 1215. In this regard, the Commission has concluded that “websites are a common feature of many media organizations [and] posting news stories, commentaries, and editorials on a press entity’s website to be within the entity’s legitimate press functions.” FEC Advisory Opinion 2004-7 (MTV).



Office of General Counsel

July 1, 2015

Page 4

The Commission has routinely applied the press exemption to dismiss complaints alleging that political commentary by media entities and personalities is subject to regulation under federal campaign finance law. *See, e.g.*, MUR 6604 (CBS, et al.); MUR 6320 (John Gomez, et al.); MUR 6242 (J.D. Hayworth 2010, et al.); MUR 5928 (Kos Media, LLC, et al.); MUR 5569 (John Kobylt, et al.); MUR 5562 and 5570 (Sinclair Broad. Grp., Inc.); MUR 5555 (Dave Ross, et al.); MUR 4689 (Robert K. Dornan, et al.); MUR 3931 (CBS, Inc., et al.); MUR 3500 (Garry B. Trudeau, et al.); MUR 486 (Charles Percy, et al.). "Commissioners have repeatedly concluded that the media exemption applies without regard to whether programming is biased or balanced." *Explanation and Justification to the Internet Communications Regulations*, 71 Fed. Reg. 18,589, 18,609 (April 12, 2006). *See also* Factual and Legal Analysis at 6, MUR 5928 (Kos Media, LLC, et al.) ("[T]he Commission has repeatedly stated that an entity that would otherwise qualify for the media exemption does not lose its eligibility because it features news or commentary lacking objectivity or expressly advocates in its editorials the election or defeat of a federal candidate.").

"Obviously, where the press exemption applies, no disclaimer is needed." Statement of Reasons of Comm'rs Mason and von Spakovsky at 3, MUR 5679 (Scranton Times-Tribune); FEC Advisory Opinion 2010-08 (Citizens United) (concluding that if "activities fall within the media exemption ... they are exempt from the Act's disclosure, disclaimer, and reporting requirements").

COMPLAINT

The Complaint summarizes the "audio blog" commentary in this matter as "listing off facts, allegations and opinions regarding announced Presidential Candidate Ted Cruz [that] clearly and expressly advocated for the defeat of Mr. Cruz." The Complaint alleges that the "audio blog" broadcast "to advocate for the defeat of Mr. Cruz, put[] both the author and station in clear violation of FEC rules" as, perhaps, an impermissible use of a WHJY airtime. The Complaint avers that "no disclaimer was given as to who (or whom) paid for the advertisement" and that WHJY and Mr. Charles violated "advertising rules as they pertain to expressly advocating for or against announced candidates for Federal Office."

Prior to its name-change, iHeartMedia, Inc., its radio stations and on-air personalities had long been targets of complaints filed with the Commission, all of which were dismissed pursuant to the press exception. *See, e.g.*, MUR 6320 (John

Office of General Counsel
July 1, 2015
Page 5

Gomez, et al.); MUR 6242 (J.D. Hayworth 2010, et al.); MUR 5569 (The John and Ken Show, et al.). This Complaint alleges that WHJY and Mr. Charles engaged in political commentary comparable to that at issue in those previous matters.

DISCUSSION

WHJY's dissemination of the "audio blog" clearly qualified for the press exemption. The content of the "audio blog" was political commentary disseminated by WHJY which is not owned or controlled by a federal candidate, committee, or political party. 11 C.F.R. §§ 100.73, 100.132. Rather, WHJY is a media entity that was acting in its legitimate press function when it publicly disseminated the "audio blog" in a form comparable to WHJY's other content. FEC Advisory Opinion 2008-14 (Melothe, Inc.); FEC Advisory Opinion 2005-16, at 4 (Fired Up!); FEC Advisory Opinion 2004-7 (MTV).

First, the content of the "audio blog" was pure political commentary about a presidential candidate. As previously noted, the fact that the "audio blog" advocated against a federal candidate does not disqualify it from the press exemption.

Second, WHJY is owned by iHeartMedia, Inc., a publicly traded global entertainment company with diversified shareholders as owners. iHeartMedia, Inc. is not owned or controlled by a federal candidate, committee, or political party.

Third, WHJY is a radio station and its radio broadcast and website posting of the "audio blog" was squarely within WHJY's legitimate press function. WHJY's radio broadcasts and website are available to the general public, as evidenced by the fact that the Complaint cites both. And WHJY disseminated the "audio blog" in precisely the same way that it disseminates content by its other on-air personalities: radio broadcasts and website postings.

Thus, the press exception unequivocally applied to the "audio blog." The Complaint's allegation of a "clear violation of FEC rules" – either as an impermissible use of WHJY airtime "to advocate for the defeat of Mr. Cruz" or



Office of General Counsel
July 1, 2015
Page 6

because "no disclaimer was given as to who (or whom) paid for the advertisement"³
– does not withstand scrutiny.

CONCLUSION

WHJY's dissemination of the "audio blog" clearly qualified for the press exemption and, therefore, is not subject to regulation under the Act and the Commission's regulations. The Commission should find no reason to believe that a violation occurred and should dismiss the Complaint.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jan Baran", written in a cursive style.

Jan Witold Baran
Caleb P. Burns

Enclosures

³ Because the press exception applied, no disclaimer was required. FEC Advisory Opinion 2010-08 (Citizens United). In any event, the enclosed transcript and accompanying printout of the website posting of the "audio blog" clearly show that both the radio broadcast and the website posting were sponsored by WHJY.

GEOFF CHARLES 94HJY AUDIO BLOG 4.13.15

Musical Intro

**Female
Announcer:**

And now, Charles and the Diary of a Psychotic Audio Blog on 94 HJY

**Geoff
Charles:**

Here's some things to think about, if you want to vote for Ted Cruz for President. Ted wants to dismantle every government entitlement program leaving seniors with no Social Security and no Medicare. Ted wants to get rid of the IRS. Ted wants to drill the Gulf of Mexico dry of every bit of oil, saying that oil spills are rare and almost never cause any damage. Besides says Ted, fishing the Gulf is not as import as drilling for oil, which he wants to sell to other countries. Ted has a billionaire backing him up who says space aliens are already here on earth and they want the environment to change to suit their needs. Ted agrees. Environmentalists are the enemy of the aliens who only want to make life better for all of us. Ted wants to make all abortions punishable by prison sentences. Ted wants Christianity to be America's official religion. Ted says, executive actions should override Congress and the Constitution. Ted doesn't want any more gay parades or gay marriages. Ted doesn't want the IRS to ask us about the content of our prayers. Ted would prohibit the IRS from auditing Tea Party members. Ted wants a no vote on reauthorizing the Violence Against Women Act. Ted wants the 10 Commandments posted in all public squares and wants to put God back into domestic and foreign policy decisions. Ted opposes tax raises on the wealthy, he supports tax raises on the middle class and demands the poor pay their fair share as well. He also favors war with Iran. So a vote for Ted is a vote to bring America to its knees in supplication to what he deems to be the resurrection of American values and its devotion to its Christian heritage. Meanwhile, any nation who threatens our worldwide rule, will be bombed back into the stone age. A vote for Ted means America inches closer to a plutocratic dictatorship blessed by God. Here's your chance to finally build that temple of doom.

**Show's
Disclaimer:**

The views expressed by Charles are his own, they do not necessarily reflect the views or opinions of those persons not undergoing psycho analysis, dealing with multiple personality disorders, anxiety attacks or mood swings. Comment on the Blog and get the director's cut right now at 94hgy.com, keyword: Charles.

Musical Ending

94 HJY

On-Air

Inner Sanctum

Music

Photos

Connect

Search/Keyword

Like 35k Follow 8+1

Listen Live
onNow Playing on 94HJY
Selling The Drama by LiveOn Air
Jenn**GET TO MARTHA'S VINEYARD
WITHOUT THE CAPE TRAFFIC**

FAST LUXURY VESSEL WITH CASH BAR, FLAT SCREEN TVS, COMFORTABLE SEATING



Home » On-Air » Charles » Blog: 04/13/15

Charles

Blog: 04/13/15

Recommend 2 Tweet Share + RSS

Posted Monday, April 13th 2015 @ 7pm

FROM THE WHITE HOUSE TO THE TEMPLE OF DOOM

Here are some things to think about if you want to vote for Ted Cruz for President.

Ted wants to dismantle every government entitlement program leaving seniors with no Social Security and no Medicare. Ted wants to get rid of the IRS. Ted wants to drill the Gulf of Mexico dry of every bit of oil saying that oil spills are rare and almost never cause any damage. Besides, says Ted, fishing the Gulf is not as important as drilling for oil which he wants to sell to other countries.

Ted has a billionaire backing him who says space aliens are already here on earth and they want the environment to change to suit their needs, not ours. He says the aliens must have their way or they will zap us all to death with laser beams. He says the aliens want us to have more money and that they will provide alternatives for air, food, and water. In other words, trust them to keep us healthy and happy.

Ted agrees. Environmentalists are the enemy of the aliens who only want to make life better for all of us. Ted wants to make all abortions punishable by prison sentences. Ted wants Christianity to be America's official religion.

Ted says executive actions should override Congress and the Constitution. Ted doesn't want any more gay parades or gay marriages. Ted doesn't want the IRS to ask us about "the content of our prayers." Ted would prohibit the IRS from auditing Tea Party members.

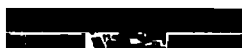
Ted would eliminate unemployment insurance because it exacerbates job opportunities. Ted would eliminate government handouts to anyone because it creates dependency.

Ted wants a no vote on reauthorizing the Violence Against Women Act. Ted wants the Ten Commandments posted in all public squares and wants to put God back into domestic and foreign policy decisions. Ted opposes tax raises on the wealthy. Ted supports tax raises on the middle class and demands the poor pay their fair share as well.

Ted favors war with Iran.

So a vote for Ted is a vote to bring America to its knees in supplication to what he deems to be the resurrection of American values and its devotion to its Christian heritage. Meanwhile, any nation who threatens our worldwide rule will be bombed back to the Stone Age.

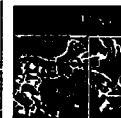
A vote for Ted means America inches closer to a Plutocratic dictatorship blessed by God. Here's your chance to finally build that Temple of Doom.

Recommended Stories**Pro Tennis
in Newport****HALL OF FAME
TENNIS
CHAMPIONSHIPS**

DON THE TYP ALAN CUP

JULY 11-19

ATP



NOW PLAYING

Selling The Drama

Live

Facebook

Twitter

Email

Gmail

Favorites

I can't believe we made it.

More... (23)

AddThis

Recent Posts

Email

Gmail

Favorites

I can't believe we made it.

More... (23)

Blog: 06/19/15

Blog: 06/18/15